

REMARKS

The rejection of the pending claims under 35 U.S.C. 102(a) as being anticipated by FR2842090 is respectfully traversed for two distinct reasons.

The Applied Reference Is Not Prior Art With Respect To The Present Application.

The effective date of the reference as prior art is the date that it was laid opened to the public, which was January 16, 2004.

A printed publication, including a published foreign patent application, is effective as of its publication date. MPEP Section 715 III C.

The present application is a National Stage of an International Application designating the U.S. The filing date of the International Stage Application is also the filing date for the National Stage Application. 35 U.S.C. 363 and MPEP 1893.03(b).

Therefore, the filing date of the present application is July 11, 2003, which is before the publication date of the French reference.

The Reference Discloses Applicant's Own Invention.

The published reference and the present application name the same inventors. Therefore, the reference would be available as prior art only if it were published more than one year before the filing date of the present application. As

already noted above, the reference was published after the filing date of the present application.

It is therefore submitted that the prior art rejection is unfounded, and it is asked that this rejection be withdrawn.

Upon withdrawal of the prior art rejection, there will remain in the application only the provisional non-statutory obviousness-type double patenting rejection.

"The 'provisional' double patenting rejection should continue to be made by the Examiner in each application as long as there are conflicting claims in more than one application unless that 'provisional' double patenting rejection is the only rejection remaining in at least one of the applications." MPEP Section 804 I.B.

"If a 'provisional' non-statutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the Examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a Terminal Disclaimer." MPEP Section 804 I.B.1.

In the present case, since both applications have the same filing date, and the present application has the earlier U.S. serial number, there would be no reason to require a Terminal Disclaimer in the present case.

It is therefore understood that the merits of the double patenting rejection will be considered in connection with the copending application.

However, for the record, it is believe appropriate to point out at this time that the double patenting rejection is unjustified because the two applications are directed to entirely different novel features. Specifically, claim 1 of the present application is directed to a coffee maker having a particular cartridge indexing arrangement, whereas claim 1 of the '947 application relates essentially to a coffee maker having an improved locking device.

The assertion that the claims of one application are merely an obvious variation of those of the other application is, in this case, unfounded.

In view of the foregoing, it is requested that the rejections presented in the Action be reconsidered and withdrawn and that the present application be allowed.

Respectfully submitted,

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